



January 5, 2001

The Honorable Donald E. Otis
Mayor of the City of Haines/Petitioner's Representative
P.O. Box 1049
Haines, Alaska 99827

Dear Mayor Otis:

On December 27, 2000, we received the *Petition by the City of Haines for Consolidation of the City of Haines and the Haines Borough as a Home Rule Borough* (hereinafter "Petition").

The consolidation proposal outlined in the Petition is subject to approval by the Local Boundary Commission pursuant to AS 29.06.130. If the Commission grants the Petition, consolidation would then be subject to approval by a majority of the voters who vote on the question at an areawide election within the Haines Borough pursuant to AS 29.06.140 and 3 AAC 110.250. The Petition proposes:

- dissolution of the existing City of Haines, a first class city;
- dissolution of the existing Haines Borough, a third class borough;
- incorporation of a new home rule borough named the "City and Borough of Haines";
- creation of the 20.9 square mile Townsite Service Area with boundaries conforming to the boundaries of the existing City of Haines.

We are aware that the Haines Borough Assembly has adopted Resolution #512 "asking the Local Boundary Commission to not proceed with the City's consolidation petition." There is no basis in law for granting the Borough's request. The Commission cannot simply defer action on a properly filed petition or deny a petition without judging its merits. AS 44.33.812 imposes a duty on the Commission to consider the proposal. Moreover, the Alaska Supreme Court has held that the statute implies that the Commission must act in a timely manner.¹

¹ U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n, 489 P.2d 140, 142 (Alaska 1971). The statute cited by the Court in that case, AS 44.19.260(a)(3), has since been renumbered twice but remains substantially unaltered otherwise.

We understand from informal discussions with the Haines Borough Clerk that the Borough's principal concern regarding the current consolidation proposal is the change to areawide assembly representation proposed in the Petition.

The decision regarding the proposed form of assembly representation is, of course, a discretionary judgment that involves broad public policy. It is the prerogative of the petitioner – in this case, the City of Haines – to make such judgments. However, the apparent rift that exists between the City of Haines and the Haines Borough over the issue of apportionment is troubling to this agency.

Frankly, it does not bode well for the success of the consolidation proposal. In 1998, a similar consolidation proposal was defeated by a margin of less than three-tenths of one percent of the total votes cast. The 1998 proposal differed from the current Petition in that the former provided for district representation by the assembly.

The 1998 proposal was, of course, filed jointly by the City of Haines and the Haines Borough. We are concerned that if the Borough maintains its opposition to the City's current proposal, the chances for voter approval are likely to be significantly diminished.

Media accounts indicate that City officials believe that there will be greater support for the consolidation proposal with areawide representation. If that is indeed the case, the City's decision to propose areawide representation would seem to be an appropriate move.

It is evident, however, that the Borough has a different impression of the voters' preferences. We strongly encourage you and the City Council to meet with the Haines Borough Mayor and Assembly in an attempt to resolve the differences over the issue of the proposed assembly representation. We are encouraged by the views expressed by Haines Borough Assembly member Shirley Willard at the December 19th Assembly meeting that it is essential for the City and Borough to work cooperatively on the issue of consolidation.

Perhaps the City and the Borough could jointly sponsor a public survey by a disinterested party or take other steps to accurately determine the views of the voters on the important issue of assembly representation. Obviously, if the Petition reflects the views of the majority of voters on the issue of assembly representation, its chances for success will be enhanced. We are willing to provide technical and financial assistance in any effort to address the issue of assembly representation.

If it is subsequently determined that a different form of assembly representation is favored, the City would have the opportunity to amend the Petition pursuant to 3 AAC 110.540. It is our judgment that such an amendment could be made without incurring the need to repeat or delay any of the procedural steps outlined in 3 AAC 110.400 – 3 AAC 110.660.

Notwithstanding the controversy over the assembly apportionment issue, we found the Petition to be well written, accurate, credible, and comprehensive. This is consistent with prior submittals to the Local Boundary Commission by the City of Haines. Accordingly, the Petition is hereby accepted for filing.

Accepting the Petition for filing formally initiates the opportunity for review and comment on the proposal by interested individuals and organizations. It does not mean that we have taken a position with respect to the merits of the proposal. This agency will offer its analysis of the proposal after we have had the opportunity to further examine the Petition and to consider any timely responsive briefs and comments on the proposal that are yet to be filed, along with the Petitioner's answer to those responsive briefs and comments.

In accordance with 3 AAC 110.450 – 3 AAC 110.470, you must now provide public notice of the filing of the Petition, serve a copy of the Petition on certain entities, and take other actions outlined in this letter. Please read and follow the instructions carefully. A checklist is enclosed to assist you in that regard.

Public Notice.

Public notice of the filing of the Petition must be given by publication, posting, and mailing in accordance with 3 AAC 110.450. Two forms of the public notice are enclosed for your use (one for publication and the other for posting and mailing).

In accordance with 3 AAC 110.640(a), the Chairman of the Local Boundary Commission has set March 9, 2001 as the deadline for the receipt in this office of responsive briefs and written comments concerning the Petition. Arrangements should be made at your earliest practical opportunity for publication, posting, and mailing of the notice of the filing of the Petition.

Posting of Notice. As required by 3 AAC 110.450(a)(2), the public notice of the filing of the Petition must be posted in *at least* the following seven prominent locations readily accessible to the public within the area proposed for consolidation:

1. Haines Municipal Building
2. Haines Borough offices
3. Haines Public Library
4. Haines Post Office
5. Howsers Supermarket
6. Mosquito Lake School
7. Covenant Life Center

Additionally, you may choose to post the notice at the Klukwan Community Center (outside the territory proposed for consolidation), as well as on signs on the Haines Highway and Mud Bay Road, and at any other locations that you choose. However, posting is only required for the seven sites listed above.

You must arrange for the posted notices to be inspected on a reasonable basis (we suggest once a week) to ensure that they remain posted until March 9, 2001.

Notice to Specific Individuals and Organizations. We will provide notice of the filing of the Petition to appropriate State officials, including members of the Local Boundary Commission, the heads of principal agencies, and others. A list of State officials to whom we will give notice is enclosed.

You must provide the notice of the filing of the Petition to the Haines Borough and to the City of Skagway as required by 3 AAC 110.450(a)(3). At your discretion, you may provide notice to the three parties listed in Section 5 of Exhibit K, or to any other individual or organization which, in the judgement of City officials, warrants such notice.

Publication and Broadcasting. 3 AAC 110.450(a)(1) requires that you publish a public notice of the filing of the Petition in a display ad format at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the department. We are required by 3 AAC 110.450(b) to specify the wording of the notice.

We designate the *Chilkat Valley News* for publication of the notice of the filing of the Petition.² The enclosed camera-ready version of the notice is provided to facilitate publication. The camera-ready version is in a display ad format, two-columns wide and six-inches long, the minimum size allowed by law. The first publication must occur by January 18. Again, the 2nd and 3rd publication must follow in consecutive weeks.

Although not required by law, we urge you to request that KHNS broadcast public service announcements of the filing of the Petition. We have drafted a public service announcement for your use in that regard. (You should state at the top of the announcement the dates that you wish to have the announcement broadcast.)

We will arrange for the notice to be published on the State's Internet website, *Online Public Notices* (<http://notes.state.ak.us/pn/pubnotic.nsf>).

Service of Petition.

In accordance with 3 AAC 110.460(a), a complete copy of the Petition must be served on the Haines Borough and the City of Skagway within 25 days of the receipt of this letter. The copy and exhibits used for service must conform in size and color to the original Petition.

Opportunity for Public Review of Petition Materials.

In accordance with 3 AAC 110.460(b), the Petition, including all exhibits, must be made available for public review at the Haines Public Library and at the offices of the City of Haines.

In addition to the Petition materials, a copy of the laws establishing standards and procedures for consolidation should also be made available at the Haines Public Library and the City offices. The consolidation criteria and related constitutional provisions are found in AS 29.06.130, AS 29.05.031, 3 AAC 110.240 - 3 AAC 110.250, 3 AAC 110.045 – 3 AAC 110.060, and Article X, §§ 1, 3 and 5 of Alaska's Constitution. The procedures governing consolidation are found in AS 29.06.090 – 29.06.170 and 3 AAC 110.400 - 3 AAC 110.990. A copy of these materials is enclosed.

² City Administrator Vince Hansen indicated that the City of Haines publishes its notices in the *Chilkat Valley News* because it has broader circulation.

As new documents are added to the record in this proceeding, copies must be included with the materials available for public review at the Haines Public Library and City offices. Such materials will include the public notice of the filing of the Petition, responsive briefs, written comments concerning the Petition, the Petitioner's reply brief, our preliminary report on the consolidation proposal, public comments on our preliminary report, our final report on the consolidation proposal, public notice of the Commission's hearing, and the Commission's written Statement of Decision concerning the consolidation proposal. Those materials must remain available for public review through the last date on which the Commission may reconsider its decision under 3 AAC 110.580.

Additional Copies of the Petition.

You have already complied with the requirement set out in 3 AAC 110.470 to provide five additional complete copies of the Petition documents to this office.

Proof of Notice and Service.

3 AAC 110.470 requires that you provide a sworn affidavit to this office within 50 days of the receipt of this letter documenting that the steps outlined herein have been completed. A form is enclosed for your use in that regard.

The affidavit should be submitted to Dan Bockhorst at the address noted on the letterhead. If you have questions or desire further information concerning any of the matters outlined in this letter, please call Mr. Bockhorst at 269-4559.

Cordially,



Patrick K. Poland
Director

Enclosures:

1. "Public Notice – Petition to Consolidate the City of Haines and the Haines Borough" (8.5" X 11" format);
2. "Public Notice – Petition to Consolidate the City of Haines and the Haines Borough" (camera-ready version for publication in the *Chilkat Valley News* as a display ad 2 columns X 6 inches);
3. Suggested public service announcement of the filing of the Petition for consolidation;
4. list of individuals to whom notice of the filing of the Petition will be provided by the Department of Community and Economic Development;

5. consolidation criteria and related constitutional principles set out in AS 29.06.130, AS 29.05.031, 3 AAC 110.240 - 3 AAC 110.250, 3 AAC 110.045 – 3 AAC 110.060, and Article X, §§ 1, 3 and 5 of Alaska's Constitution;
6. procedures governing consolidation set out in AS 29.06.090 – 29.06.170 and 3 AAC 110.400 - 3 AAC 110.990;
7. summary list of requirements for notice, service, and deposit of the Petition;
8. form for affidavit of notice, service, and deposit of Petition.

cc: Kevin Waring, Chairman, Local Boundary Commission
Dan Bockhorst, Local Boundary Commission Staff Supervisor
Jerry Lapp, Mayor, Haines Borough